

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION

STEVEN DALE BELL,

No 1-08-cv-01090 VRW

Petitioner,

ORDER DENYING PETITION FOR WRIT  
OF HABEAS CORPUS

v

JAMES D HARTLEY,

Respondent.

Petitioner Steven Dale Bell, a state prisoner proceeding  
pro se, has filed a petition for a writ of habeas corpus under 28  
USC § 2254. Doc #1.

Respondent James D Hartley both opposes the issuance of  
the writ and requests a stay of proceedings pending the Ninth  
Circuit's en banc review in Hayward v Marshall, 512 F3d 536 (9th  
Cir 2008); reh'g en banc granted, 527 F3d 797 (9th Cir, May 16,  
2008) argued June 24, 2008. Doc #17. Petitioner opposes the stay.  
Traverse (Doc #18) at 2-3.

Habeas proceedings "implicate special considerations that  
place unique limits on a district court's authority to stay a case  
in the interests of judicial economy," INS v Yong, 208 F3d 1116,  
1120 (9th Cir 2000). The court has determined that this habeas  
matter can readily be resolved without the Ninth Circuit's

1 anticipated ruling in Hayward and that a stay would therefore not  
2 be appropriate. The request to stay this proceeding is therefore  
3 DENIED.

4 For the reasons stated herein, the petition for habeas  
5 corpus is also hereby DENIED.

7 I

8 A

9 The following facts were established by evidence at  
10 petitioner's trial.<sup>1</sup> Petitioner married Cathy Gandrud in 1993. A  
11 few months after the wedding, petitioner begun an extramarital  
12 affair with Sue Montoya. Cathy and petitioner had a custom of  
13 commemorating their wedding day on the fifteenth day of each month.  
14 On August 15, 1994, a few days after returning from a secret  
15 getaway with Montoya, petitioner woke Cathy with a kiss and asked  
16 her to close her eyes and sit at the foot of the bed, explaining  
17 that he wanted to give her an anniversary present. Cathy complied.  
18 The next thing she knew, she was lying on the floor with a plastic  
19 bag stretched over her face. She struggled to get away and  
20 suddenly the bag was removed. Petitioner told her that she had  
21 hurt herself, but when Cathy noticed that she was bleeding from a  
22 cut on her head and spotted a club-like metal device nearby, she  
23 concluded that petitioner had tried to kill her. She began to  
24 scream and demanded that petitioner call 911. Police responded to  
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26 <sup>1</sup> This factual summary is abbreviated from the order denying petitioner's  
27 previous federal habeas petition arising from his 2004 parole denial. That order  
28 set forth factual findings contained in the unpublished state court of appeal  
opinion affirming petitioner's conviction. Bell v Mendoza-Powers, 2007 WL  
4219367, \*1-4 (ED Cal Nov 27, 2007).

1 the call and arrested petitioner. Police later found the club-like  
2 device and a plastic bag under a bed in the daughter's bedroom.  
3 Cathy was found to have suffered a blunt-instrument wound to the  
4 back of her head which required sutures. She was treated and  
5 released from hospital later in the day, but continued to  
6 experience neurological symptoms thereafter.

7 At trial, petitioner's theory of defense was that he had  
8 not attacked Cathy. He testified that he found her on the floor  
9 bleeding, entangled in a plastic bag and that although he had built  
10 the club-like device, he had not used it that day.

11 In 1995, petitioner was convicted by a jury in Santa  
12 Clara County of attempted first degree murder and assault with a  
13 deadly weapon. Doc #1 at 3. Petitioner was sentenced to an  
14 indeterminate term of life plus a four-year enhancement for the use  
15 of a deadly weapon. He is currently serving his sentence at the  
16 California Department of Corrections and Rehabilitations, Avenal  
17 State Prison. Id. In 1996 the court of appeal affirmed this  
18 conviction in an unpublished opinion not included in the record  
19 herein. In 1997, the high court followed suit.

20 In 2004, the Board of Parole Hearings ("Board") denied  
21 parole in petitioner's first suitability hearing. Doc #2 at 13-14.  
22 Petitioner unsuccessfully sought habeas relief in the state  
23 superior, appellate and high courts and in this federal court.  
24 Bell, 2007 WL 4219367, \*1, modified by order dated March 4, 2008,  
25 2008 WL 598171.

26 On November 7, 2006 the Board conducted a lengthy  
27 hearing, found petitioner unsuitable for parole for the second time  
28 and deferred rehearing for two years. Transcript of Board of

1 Parole Hearings at Avenal Prison at 118 (Doc #17 Ex 5 at 118)<sup>2</sup>.

2 The Board found that petitioner was "not suitable for parole and  
3 would pose an unreasonable risk of danger to society or a threat to  
4 public safety if released from prison." Id.

5 The Board included in its decision specific findings as  
6 follows:

7 You committed the offense in an especially cruel manner.  
8 On the day of the commitment offense you essentially woke  
9 your wife up with a kiss on the cheek. As she walked to  
10 the bathroom, you asked her to sit down and close her  
11 eyes and that [sic] she thought you were giving her  
12 another anniversary present. She heard rustling in the  
13 closet. Suddenly she woke up with an injury to the back  
14 of her head due to the blow from the pipe, and with a bag  
15 over her face with you standing above her. The offense  
16 was carried out in a manner which demonstrates a callous  
17 disregard to human suffering. The motive for the crime  
18 was inexplicable or very trivial in relation to the  
19 offense. A recent psychological report, dated November  
20 11, 2005, authored by Dr Schroeder, indicates a need for  
21 a longer period of observation and evaluation or  
22 treatment. Therefore, a longer period of observation  
23 and/or evaluation of the prisoner is required before the  
24 Board should find that the prisoner is suitable for  
25 parole. The panel recommends today that you should  
26 remain disciplinary-free and you should cooperate with  
27 clinicians in the completion of a clinical evaluation.

18 Id at 120-21.

19 Petitioner properly exhausted his habeas claims through  
20 the state court system. On May 15, 2007, the superior court in  
21 Santa Clara County denied the petitioner's habeas petition, relying  
22 on the California Supreme Court's rule in In re Dannenberg, 34 Cal  
23 4th 1061, 1096 n 16 (2005) that "the Board must apply detailed  
24 standards when evaluating whether an individual is unsuitable for  
25 parole on public safety grounds." Id. The superior court, in a  
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27 <sup>2</sup> Page numbers correspond to the numbering in the original document. The  
28 transcript of the 2006 Board of Parole Hearings can be found in Doc #17 Ex 5 at 8-  
11.



2007)). (See also Sass, 461 F3d at 1128-29; McQuillion v Duncan, 306 F3d 895, 900 (9th Cir 2002)).

The Supreme Court has held that "revocation of good time does not comport with the 'minimum requirements of procedural due process,' unless the findings of the prison disciplinary board are supported by some evidence in the record." Superintendent, Massachusetts Correctional Inst v Hill, 472 US 445, 454 (1984).

The Ninth Circuit applied the Hill standard to the parole context: "a parole board's decision deprives a prisoner of due process with respect to this interest if the board's decision is not supported by 'some evidence in the record.'" Irons, 505 F3d 846 at 851 (citing Sass, 461 F3d at 1128-29).

Respondent asserts that the "some evidence" standard is not clearly established law for purposes of AEDPA because the Supreme Court has never used it in the context of parole proceedings. Doc #17 at 5-6. But this court is bound by Ninth Circuit rulings applying the Hill standard to parole suitability determinations. (See Irons, 505 F3d at 851; McQuillion, 306 F3d at 904; Biggs v Terhune, 334 F3d 910, 915 (9th Cir 2003)).

In order to determine whether a state court's decision was in fact an unreasonable application of clearly established federal law, the federal court reviewing a habeas corpus petition must "look through" to the last reasoned decision of the state court. Avila v Galaza, 297 F3d 911, 918 (9th Cir 2002) (citing Ylst v Nunnemaker, 501 US 797, 803-04 (1991)). Accordingly, this court must examine the decision of the superior court.

Reviewing federal courts "must look to California law to determine the findings that are necessary to deem a prisoner

1 unsuitable for parole, and then must review the record in order to  
2 determine whether the state court decision holding that these  
3 findings were supported by 'some evidence' constituted an  
4 unreasonable application of the 'some evidence' principle  
5 articulated in Hill." Irons, 505 F3d at 851.

6 California Penal Code § 3041(b) (West 2009) provides that  
7 the parole board may consider a variety of factors in determining  
8 whether the inmate constitutes a threat to public safety.  
9 California Code of Regulations § 2402(a) (West 2009) sets forth the  
10 criteria for determining suitability for parole: "[r]egardless of  
11 the length of time served, a life prisoner shall be found  
12 unsuitable for and denied parole if in the judgment of the panel  
13 the prisoner will pose an unreasonable risk of danger to society if  
14 released from prison." *Id.* Information to be considered includes  
15 all relevant, reliable information such as the prisoner's social  
16 history, past and present mental state, past criminal history, the  
17 base and other commitment offenses, past and present attitude  
18 toward the crime and any other information which bears on the  
19 prisoner's suitability. 15 Cal Code Regs § 2402(b).

20 Under these regulations, the circumstances tending to  
21 show that a prisoner is unsuitable include: the commitment offense,  
22 the offense having been committed in "an especially heinous,  
23 atrocious or cruel manner"; prisoner's previous record of violence;  
24 "a history of unstable or tumultuous relationships with others";  
25 commission of "sadistic sexual offenses"; "a lengthy history of  
26 severe mental problems related to the offense" and "serious  
27 misconduct in prison or jail." 15 Cal Code Regs § 2402(c) (A) - (E).  
28 Circumstances tending to show that a prisoner is suitable for

1 parole include: no juvenile record; reasonably stable relationships  
2 with others; remorse; no significant history of violent crime;  
3 "realistic plans for release \* \* \* or marketable skills that can be  
4 put to use upon release"; "[i]nstitutional activities indicat[ing]  
5 an enhanced ability to function within the law upon release." 15  
6 Cal Code Regs § 2402(d).

### 8 III

9 The petition sets forth eleven claims. The claims can be  
10 grouped in two categories. The first relates to petitioner's  
11 argument that the Board's finding that he currently poses an  
12 unreasonable risk of danger to society if released from prison was  
13 not based on "some evidence"; as part of this argument, petitioner  
14 challenges the Board's reliance on a psychological report authored  
15 by Dr Schroeder. The second group of claims asserts that the Board  
16 improperly relied on immutable factors relating to the commitment  
17 offense.

18 Petitioner argues that there is no evidence supporting  
19 the Board's "especially cruel and callous manner" finding. This  
20 argument is without merit.

21 Pursuant to § 2402(c)(1) the Board found that the offense  
22 was carried out in a "cruel and callous manner" which matches  
23 closely with the regulations' "especially heinous, atrocious and  
24 cruel manner" language. Doc #17 Ex 5 at 8. The Board specifically  
25 found the presence of factors (B) and (D): that the offense was  
26 dispassionate and calculated like an execution-style murder and  
27 that the crime demonstrated an exceptionally callous disregard for  
28 human suffering. There is ample evidence to support both of those



1 findings. Petitioner woke his wife affectionately, deceived her  
2 into closing her eyes, told her to await an anniversary present,  
3 then bludgeoned her with a metal club and attempted to suffocate  
4 her. As noted in the order denying petitioner's previous habeas  
5 petition, "the victim was beaten or clubbed and then suffocated in  
6 such a manner as not to cause immediate death but induce terror in  
7 the victim." Bell, 2007 WL 4219367 \*9.

8           Moreover, the evidence supporting the denial of parole  
9 goes beyond the circumstances of the commitment offense. The  
10 Board's decision also relied on petitioner's present attitude  
11 toward the crime. Doc #17-5 at 119-20. "Some evidence" supports  
12 this finding. Commissioner Poncrave said: "as far as the panel is  
13 concerned at no time during the course of the hearing did you show  
14 any emotion or remorse." Id at 120. In addition, the Board relied  
15 on the life-term evaluation in which the psychologist concluded  
16 that petitioner had not expressed remorse or come to terms with his  
17 crime. Id at 119. Petitioner argues that the Board counted his  
18 choice to decline to discuss the commitment offense against him and  
19 "punished" him for exercising this right. Although it might well  
20 have been difficult for petitioner to talk about his remorse while  
21 exercising his right not to speak about his life-crime, Dr  
22 Schroeder's report and petitioner's apparent lack of emotion during  
23 the course of the hearing provided evidence to support the Board's  
24 finding about petitioner's present attitude toward the crime.

25           Additionally, the Board supported its denial of parole by  
26 finding that petitioner required a longer period of observation and  
27 evaluation. "Some evidence" supports this finding.  
28

1           The Board properly considered psychological evaluations  
2 in drawing its conclusion as they constitute relevant information  
3 relating to petitioner's mental state. The Board considered an  
4 evaluation performed at its request by Dr Schroeder. In her  
5 evaluation, Dr Schroeder concluded that petitioner posed a below-  
6 average risk of danger to others, but noted that before the crime  
7 he also posed a low risk. In addition, she pointed out that the  
8 crime was not committed in a moment of rage or loss of control but,  
9 rather, that petitioner was calm and calculated in his actions. Dr  
10 Schroeder also found that petitioner had failed to come to terms  
11 with his crime, failed to express remorse and still had "much work  
12 to do." Doc #17 Ex 6 at 2.

13           Petitioner argues that Dr Schroeder's assessment lacks  
14 "indicia of reliability," asserting that some of her conclusions  
15 were "completely unsupported" and that an evaluation performed by a  
16 psychologist retained by petitioner that was supportive of release  
17 contradicts the Schroeder report. As mentioned before, Dr  
18 Schroeder performed the evaluation specifically for the benefit of  
19 the Board and is a board certified forensic psychologist. No  
20 reason appears in the record why the Board should treat her as  
21 anything but a highly credible and authoritative source. The Board  
22 also specifically stated that it considered the views of  
23 petitioner's psychologist. Doc #17 Ex 5 at 119. The reviewing  
24 court may not re-weight the evidence presented by the two  
25 psychological evaluations. Because Dr Schoreder's assessment  
26 recommended against release and the board properly considered her  
27 opinion, "some evidence" supports the Board's finding.  
28

1           Petitioner argues incorrectly that the Board ignored  
2 circumstances indicating suitability for parole. To the contrary,  
3 the Board specifically enumerated the suitability factors it  
4 considered: that petitioner has programmed well while incarcerated,  
5 developed marketable skills, participated in beneficial self-help  
6 programs, had no disciplinary violations and had realistic parole  
7 plans. Doc #17 Ex 5 at 118-19. Nonetheless, the Board considered  
8 those positive factors insufficient to outweigh the factors  
9 disfavoring parole and was entitled to make its determination  
10 accordingly.

11           Petitioner also urges the court to find that the Board  
12 improperly relied on opposition expressed by the prosecutor and the  
13 victim during the suitability hearing. California law requires the  
14 Board to consider such statements of opposition. Cal Penal Code §  
15 3042(f)(3); § 3043(e). Petitioner's argument fails in part because  
16 the Board did not base its decision on those statements, but merely  
17 noted them. Also, the Board's enumeration of reasons for  
18 petitioner's parole denial did not include the opposition of the  
19 victim and the prosecutor. Doc #17 Ex 5 at 120.

20           It is clear that the Board balanced a variety of factors  
21 to support its ultimate conclusion that petitioner currently poses  
22 a danger to the public if released on parole. There is "some  
23 evidence" to support all of the Board's findings.

24           Petitioner also argues that the Board relied solely on  
25 the immutable factor of his commitment offense, thus violating his  
26 due process rights as set forth in In Re Lawrence, 44 Cal 4th 1181  
27 (2008) and Biggs, 334 F3d 910. The court in Lawrence held that  
28 where evidence of an inmate's suitability for parole is

1 overwhelming and the commitment offense is both temporally remote  
2 and mitigated by circumstances indicating the conduct is unlikely  
3 to recur, the immutable circumstance that the commitment offense  
4 involved aggravated conduct does not provide "some evidence".  
5 Lawrence, 44 Cal 4th 1181 at 1213-14. The Ninth Circuit in Biggs  
6 held that over time a continued reliance on the commitment offense  
7 and pre-incarceration conduct, without more, could result in a due  
8 process violation. 334 F3d 910 at 917.

9 But the Board did not rely solely on the commitment  
10 offense but also on other factors showing unsuitability, supported  
11 by ample evidence in the record as previously discussed herein.  
12 Moreover, "certain conviction offenses may be so 'heinous,  
13 atrocious or cruel' that an inmate's due process rights would not  
14 be violated if he or she were to be denied parole on the basis that  
15 the gravity of the conviction offense establishes current  
16 dangerousness." Lawrence, 44 Cal 4th 1181 at 1228. And  
17 furthermore, petitioner's claim is further weakened by the fact  
18 that he has served only the minimum term required and has applied  
19 for parole only twice.

20 Petitioner claims that the Board violated his due process  
21 rights by deferring his next suitability hearing for two years.  
22 This claim, which asserts that the Board failed to follow state law  
23 -- specifically California Penal Code § 3041.5 -- is not cognizable  
24 on federal habeas review. Estelle v McGuire, 502 US 62, 67-68  
25 (1991).

26 Petitioner also claims the Board has an unwritten policy  
27 under which parole is denied whenever the victim attends the  
28 hearing and opposes a prisoner's release. This claim is conclusory

1 and petitioner does not offer any evidence in its support.  
2 Instead, petitioner asks this court to order an investigation. In  
3 petitioner's previous federal habeas petition a similar claim was  
4 properly rejected: "conclusory allegation not supported by  
5 statement of specific facts do not warrant habeas relief." Bell,  
6 2007 WL 4219367, \*11 (citing James v Borg, 24 F3d 20, 26 (9th Cir  
7 1994)).

8 In conclusion, the Board's finding that petitioner  
9 currently poses a threat to public safety is supported by "some  
10 evidence." Accordingly, the state court's evaluation of  
11 petitioner's claim did not "result in a decision that was contrary  
12 to, or involved an unreasonable application of, clearly established  
13 Federal law, as determined by the Supreme Court of the United  
14 States" or was "a decision that was based on an unreasonable  
15 determination of the facts in light of the evidence presented in  
16 the State Court proceeding." 28 USC § 2254(d).

17  
18 IV

19 For the reasons stated herein, the petition for a writ of  
20 habeas corpus is DENIED. The request to stay proceedings is also  
21 DENIED. The clerk is directed to close file number 1-08-cv-1090  
22 and terminate any pending motions.

23  
24 IT IS SO ORDERED.

25  
26  
27 

28 VAUGHN R WALKER  
United States District Chief Judge